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C O N F I D E N T I A L SECTION 01 OF 02 KATHMANDU 000251

SIPDIS

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TAGS: [PREL](#) [PGOV](#) [KDEM](#) [NP](#)
SUBJECT: NEPAL: COURT STAYS GENERALS RETIREMENT

REF: KATHMANDU 235

Classified By: Ambassador Nancy J. Powell. Reasons 1.4 (b/d).

Summary

11. (C) On March 24 the Supreme Court issued a stay order against the Defense Minister's decision to not extend the terms of eight Nepal Army brigadier generals. The stay order reinstates the generals until the Supreme Court issues a final verdict. Media reports depict the decision as a further loss for the Defense Minister, and it is likely to lead to additional acrimony between the Ministry of Defense and Nepal Army.

Court Ruling Stays Retirement

12. (SBU) A single bench Supreme Court decision issued March 24 stayed the forced retirement of eight Nepal Army (NA) brigadier generals. On March 23 the eight brigadier generals (Nara Bahadur Kandel, Narendra Bahadur Rawal, Kumar Budhathoi, Pawan Bahadur Pandey, Pradip Bikram Rana, Shiva Kumar Poudel, Ramesh Bistha, and Raju Prasad KC) had filed a joint writ petition at the Supreme Court demanding nullification of Defense Minister Ram Bahadur Thapa's (aka Badal) decision to not extend their terms, thus effectively retiring them as of March 20. The court remarked that the Ministry of Defense order did not elaborate reasons for the terminations and was inconsistent with precedent set by the reinstatement of Major General Pradip Pratap Bam Malla in 2006 after then Prime Minister Koirala's government retired him. (Note: Although Malla was formally reinstated and received back pay, he did not return to active duty. End Note.) The Court directed the Office of the Prime Minister, Cabinet, Ministry of Defense, NA and Chief of Army Staff to submit written explanations of the generals' retirement within 15 days.

Arguments to the Court and Prime Minister

13. (C) Attorneys for the generals argued that the decision was arbitrary, against NA rules upholding compulsory extension of tenure, and counter to the precedent set by General Malla. The stay order reinstates the generals until

the Supreme Court issues a final verdict. the court noted that the stay order would be reconsidered once the written explanations are provided. The Court decision was announced shortly after President Yadav had summoned the Prime Minister to his office to discuss, inter alia, the forced retirement decision. The President cautioned the Prime Minister against causing instability in the peace process by taking controversial actions regarding the Army without having gathered inter-party consensus.

A Further Loss For Defense Minister?

¶4. (C) Reaction to Defense Minister Thapa's decision has been mixed. Some lower ranking soldiers reacted positively (32 officers could be promoted if the decision stands), while others were concerned about possible politicization of the NA and the loss of well-trained and experienced officers. It is unclear what steps Thapa will take next. Should he take up the Court's challenge, he may successfully argue that two of the generals are not qualified for extension/promotion due to their lack of National War College - equivalent training; but finding valid grounds for dismissing the other six should prove difficult. Media reports generally depict this as a loss for the Defense Minister, hard on the heels of the recent recruitment imbroglio which was similarly portrayed as a loss for Thapa.

More Acrimony Likely

KATHMANDU 00000251 002 OF 002

¶5. (C) Given the rising acrimony between Ministry of Defense and NA headquarters, meaningful progress in establishing effective, professional civilian control over the military will prove increasingly difficult. Unless the Defense Minister is replaced in the course of an upcoming Cabinet shuffle announced by the Prime Minister, he is likely to seek out other opportunities to redress the perceived imbalance in authority between his office and the institution he nominally supervises. Some senior NA officers recognize that they have generated much of the current tension through their overly aggressive defiance of the Defense Minister and will urge a more conciliatory tone in future. Others, however, are likely to feel vindicated and urge an emboldened attitude of independence, setting conditions for further confrontation.

POWELL